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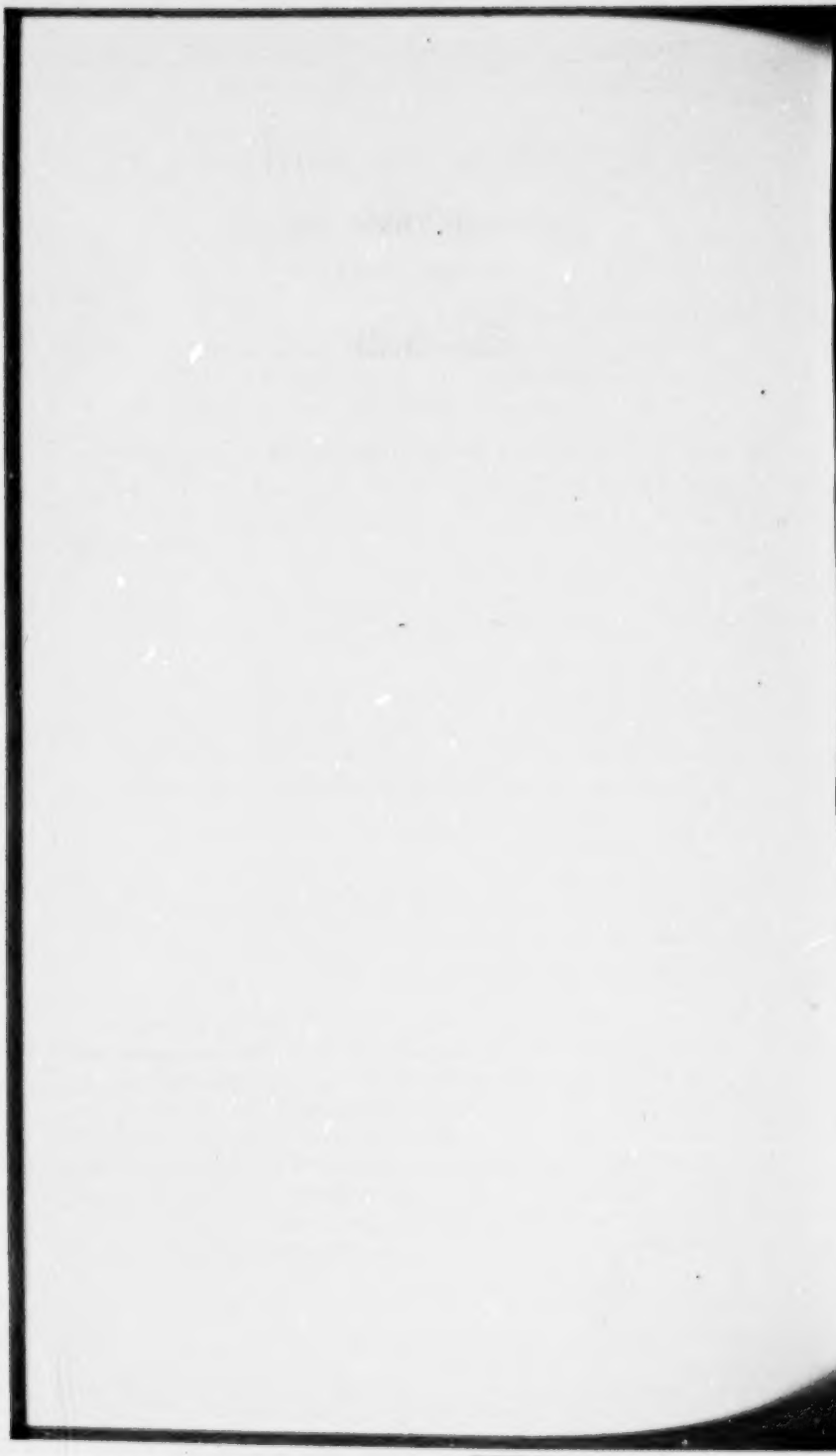

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 859

IN THE MATTER OF THE LEGAL INQUIRY INTO THE MENTAL CONDITION OF WILLIS BRAND, ALLEGED TO BE INSANE:
WILLIS BRAND,

Appellant,

vs.

MILWAUKEE COUNTY ET AL.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The United States Supreme Court has jurisdiction of this case pursuant to the following provisions of law:

28 *U. S. C. A.* 344, subsection (a):

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a

writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The hereinafter mentioned provisions of the Wisconsin Statutes are invalid as violating Article V of the amendments to the United States Constitution which reads, in part, as follows:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *",

and Article XIV, Section 1 of the amendments to the United States Constitution which reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 45.30 of the Wisconsin Statutes of 1941 reads as follows:

> "45.30 *Commitment of insane veteran.* Whenever it appears that any veteran is eligible for treatment in a United States veterans' facility and commitment is necessary for the proper care and treatment of such veteran, the court of the county in which the veteran is found, may, upon receipt of a certificate of eligibility from the veterans' administration, after adjudging the veteran insane in accordance with law, direct such veteran's commitment to the veterans' administration

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for hospitalization in a United States veterans' facility. Upon admission to any such facility, the veteran shall be subject to the rules and regulations of the veterans' administration. The chief officer of such facility is vested with the same powers exercised by superintendents of state hospitals for mental diseases within this state with reference to the retention, transfer or parole of the veteran committed. Notice of pending commitment proceedings shall be furnished the person to be committed and his right to appear and defend shall not be denied. The commitment of a veteran to a veterans' facility within this state by a court of another state under a similar provision of law, has the same force and effect as if such commitment were made by a court of this state."

Chapter 51 of the Wisconsin Statutes, which is annexed hereto in printed form, marked Exhibit "A" for identification and made an integral part hereof.

The judgment or decree of the Supreme Court of the State of Wisconsin sought to be reviewed was rendered on December 23, 1947, with a denial of motion for rehearing on February 17, 1948. The date upon which application for appeal is presented is as follows—April 27, 1948.

Nature of Case

This originally was an appeal from the judgments of the District Court of Milwaukee County, Honorable Harvey L. Neelen, District Judge presiding, entered December 24, 1941, and January 29, 1942, and the whole and every part thereof, wherein Willis Brand was adjudged legally insane and committed to the Milwaukee County Hospital for Mental Diseases until transferred to the United States Veterans' Administration Facility without notice and without a hearing, and from an order of the court dated September 11, 1946, denying appellant's motion to vacate said judgment of insanity and to grant a new trial. The said

commitment of the District Court of Milwaukee County was to a United States Veterans' Administration Facility at Downey, Illinois, outside of the State of Wisconsin. The appeal was dismissed by the Supreme Court of the State of Wisconsin on the ground that under the Wisconsin Statutes no appeal lies from a decision of a *Judge* under the provisions of Chapter 51 of the Wisconsin Statutes as distinguished from a decision of the *Court*. The appellant contends that the commitment in the District Court constituted a denial of due process under the Fifth and Fourteenth Amendments to the United States Constitution, and that the decision of the Wisconsin State Supreme Court erroneously distinguishes between *Judge* and *Court*, and by holding that under the provisions of Chapter 51 the decision of the court is that of a Judge perpetuates the denial of due process under the Fifth and Fourteenth Amendments to the United States Constitution.

Appellant relies upon the following United States Supreme Court cases:

Simon v. *Craft*, 182 U. S. 427, 45 L. Ed. 1165;
Chaloner v. *Sherman*, 242 U. S. 455, 61 L. Ed. 427, and cases cited therein;
Brinkerhoff-Faris Trust & Savings Company v. *Hill*, 281 U. S. 673, 74 L. Ed. 1107.

The appellant contends that the questions involved are substantial for the following reasons:

1. That the appellant was denied his liberty from the 18th day of December, 1941, to April 6, 1942, when he escaped from the Veterans' Administration Hospital at Downey, Illinois. That the appellant was not officially discharged on the records of the Veterans' Administration at Downey, Illinois, until May 8, 1942.

2. That the appellant's reputation is under the cloud of insanity from the 17th day of December, 1941, to the date

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that he was officially found sane in the District Court of Milwaukee County on February 20, 1946.

3. That the appellant has been denied reinstatement by the United States Civil Service Commission to his position of roentgenologist for the Veterans' Administration, which position he held for a period of over twenty years.

4. That the District Court of Milwaukee County in denying the motion for new trial has stated that the procedure in this case was no different from what has been used in any other alleged insane hearing in either the County Court or the District Court in Milwaukee County. Appellant, of course, denies that the District Court of Milwaukee County has any right to speak for the County Court of Milwaukee County or the procedure followed therein.

The question of the denial of due process under the United States Constitution was raised for the first time in the petition for a new trial and for vacation of the judgment of insanity dated June 11, 1946, in the District Court of Milwaukee County. The denial of due process was again raised on September 11, 1946, on the hearing on the petition for new trial and to vacate the judgment or order of commitment. At that time the District Court of Milwaukee County denied the prayer of the petition for a new trial, as appears in the stenographically reported proceeding on the hearing on the petition for new trial and vacation of judgment or order of commitment, and the appeal to the Wisconsin Supreme Court was based on such denial of due process. The District Court of Milwaukee County denied the contention of the appellant of any violation of the due process clause of the United States Constitution, and the Supreme Court of the State of Wisconsin dismissed the appeal in a decision distinguishing between a decision of a *Judge* and *Court*.

The specific portions of the record in which these rulings of the District Court and the Wisconsin State Supreme Court are referred to are as follows:

The opinion of the District Court is attached hereto marked Exhibit "B" for identification and made an integral part hereof.

The decision of the Wisconsin Supreme Court is attached hereto marked Exhibit "C" for identification and made an integral part hereof.

Dated this 30th day of April, 1948.

CHARLES L. MULLEN,
Attorney for Appellant.
CLYDE E. SHEETS,
Of Counsel.

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Brand v. Milwaukee County et al.
No. 859, October Term 1947;
now No. 87, October Term 1948.

Amendment to Page 6 of Statement as to Jurisdiction to Be Inserted Immediately Prior to the Following Sentence: "Dated This 30th Day of April, 1948."

The appellant also refers to the Assignments of Error as stated in this court in the petition for appeal, which Assignments of Error read as follows:

"I. Wisconsin Supreme Court erred in dismissing appeal and in failing to vacate and set aside patently void judgment of District Judge of Milwaukee County in denial of due process clause of 14th Amendment of United States Constitution as appears on face of commitments in the following respects:

"1. No notice of hearing was given to defendant.

"2. Right to appear and defend was denied to defendant.

"3. Pursuant to invalid provision of Chapter 51 of Wisconsin Statutes, proceeding was conducted before Judge rather than Court.

"4. Pursuant to invalid provision of the Wisconsin Statutes, to-wit, Section 45.30, defendant was committed outside of the State of Wisconsin beyond the jurisdiction of Wisconsin courts."

The appellant contends that in fact Willis Brand was denied due process of law.

The District Court of Milwaukee County at the preliminary hearing made the following statement:

"This is not a hearing to commit you, but it is a hearing by the court for the purpose of determining probable cause and whether doctors should be appointed."

(See page 139 of the Appendix in the Wisconsin Supreme Court.)

The writ of commitment states, in part, as follows:

"Upon notice of preliminary hearing being given to the alleged insane person, Willis Brand, *and upon notice of such further hearings being given by the guardian ad litem and the examining physicians, personal notice was not given pursuant to Section 51.02(5) of the Wisconsin Statutes.*"

(See page 121 of the Appendix in the Wisconsin Supreme Court.)

(Section 51.02(5) refers to 51.02(3) as reported on page 12 of Statement as to Jurisdiction.)

This writ of commitment apparently was issued pursuant to letter dated January 29, 1942, from Michael Kasak, Medical Director of the Milwaukee County Hospital for Mental Diseases, which reads as follows:

"

MILWAUKEE COUNTY
HOSPITAL FOR MENTAL DISEASES

Michael Kasak, M.D.
Medical Director

William L. Coffey
Director
Milwaukee County Institutions
and Departments

Wauwatosa, Wis.
January 29, 1942.

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Hon. Harvey L. Neelen,
District Court Judge,
Milwaukee, Wisconsin.

In re: Willis Brand
#16571

Honorable Sir:

We have today received authorization from the Veterans Administration to transfer Willis Brand to Downey, Illinois.

"Will you, therefore, kindly forward the necessary writ of commitment?

Yours very truly,

Michael Kasak, M.D.,

Michael Kasak, M.D.
Medical Director

MK:SK "

(See page 120 of Appendix in the Wisconsin Supreme Court.)

At the hearing to commit the only persons present were the Honorable Harvey L. Neelen, Judge of the District Court of Milwaukee County, Dr. John L. Garvey, Dr. Paul J. Purtell, J. N. LeBow, Official Reporter, although the appellant, Willis Brand, was perfectly capable of appearing, as the record shows, and as Chapter 51 of the Wisconsin Statutes requires. As the writ of commitment affirmatively shows, no notice of hearing was served upon Willis Brand as required by Chapter 51 of the Wisconsin Statutes.

Although the decision of the District Court of Milwaukee County and the decision of the Wisconsin Supreme

Court refer to a hearing and notice to the appellant, Willis Brand, of the hearing, the record in the case, as referred to above, clearly indicates that, in fact, Willis Brand never obtained a full and complete hearing and never received notice of the hearing to commit. Willis Brand was not present at the time of the hearing to commit. The District Court of Milwaukee County specifically informed Willis Brand at the time of the preliminary hearing that such preliminary hearing was not a hearing to commit. Under all of the circumstances the appellant, Willis Brand, contends that, in fact, as the record clearly shows, he was denied due process under the 14th Amendment to the Constitution of the United States.

J. D. Shelley vs. Kraemer, Nos. 72 and 87, October Term, 1947, at page 11 states:

> "That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. * * * 'It is doubtless true that a State may act through different agencies,—either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State * * * this Court pointed out that the Amendment makes void 'State action of every kind' which is inconsistent with the guaranties therein contained, and extends to manifestation of 'State authority in the shape of laws, customs, or judicial or executive proceedings.'" et seq.

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EXHIBIT "A"

1941 Wisconsin Statutes

Hospitals for Insane 51.01

Chapter 51

Hospitals and Asylums for the Insane

51.01 Application to determine sanity; questionnaire.
51.02 Procedure to determine sanity.
51.03 Jury trial.
51.04 Detention, pending the inquiry.
51.05 Commitments.
51.06 Execution of commitment; expenses and fees.
51.07 Fees of judge and examining physicians; costs and expenses of proceedings.
51.08 Maintenance and clothing of inmates.
51.09 Confinement of insane paupers.
51.10 Voluntary patients in institutions for the insane.
51.11 Re-examination of persons adjudged insane.
51.12 Transfer and discharge of patients; insane soldiers; tubercular patients.
51.13 Parole of inmates; leave of absence; presumption of sanity and discharge by lapse of time.
51.14 Reports to county judge; record.
51.15 State hospitals for insane.
51.16 Superintendent's oath and duties; subpoenas on.
51.17 Admission of patients.
51.18 Fund and clothing on discharge.
51.19 Child born in hospital.
51.20 Record of inmates.
51.21 Central state hospital.
51.22 Transfer of insane convicts and dangerous patients.
51.23 General statutes applicable; exceptions; contracts with Milwaukee hospital.
51.234 Paroles from central state hospital.
51.235 Wisconsin psychiatric institute.
51.24 Milwaukee hospital for insane.
51.25 County asylums.
51.26 Admission of patients; state aid; private patients.

51.27 Tubercular patients; segregation and separate maintenance; state aid.

51.28 Burial of deceased inmates.

51.01 Application to determine sanity; questionnaire. (1) Whenever any person within this state shall be believed to be insane, application may be made in the manner prescribed in subsection (2), by any three citizens, one of whom is to be the nearest relative or friend available, or a person with whom the person resides, or at whose house he may be, to the judge of the county court or of a district court which is a court of record, or in the absence or disability of such judge to the judge of any court of record acting in his place, for the county in which such person is found, for a judicial inquiry as to his mental condition and for an order of commitment. Provided, however, that when such person shall be a child under the age of eighteen, such application shall be made to the judge of the juvenile court of the county in which such child is found.

(2) The state board of control and the superintendents of the several hospitals for the insane and colonies and training schools for the feeble-minded and epileptics shall prescribe and prepare the forms of application and voluntary commitment, notices, interrogatories, medical certificate and order for commitments required by law in the commitment of insane, mentally deficient, epileptic persons, inebriates and drug addicts and furnish the same to the respective institutions, which shall be the sole legal forms used in such commitments and admissions. The petition for a hearing and commitment to any such institution shall be attached to and accompany the certificate of the examining physicians. Physicians appointed to examine and report upon or to certify to the mental condition of any such person, must be duly licensed and have had at least two years' experience in the practice of their profession, or one year's experience as physician in a hospital for the insane, and shall be registered by the county judge as thus qualified on a list which shall be kept for that purpose in his office. Every certificate of the examining physician shall consist

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of the following interrogatories and the answers of the examining physicians thereto:

1. Date of examination —— —, 19—.
2. Information furnished by —— —— of ——, Wisconsin, who is a — of the patient.
3. Sex —; Age — years; birthplace of patient ——.
4. Present place of residence —— county of ——.
5. If not a resident of Wisconsin where is his or her legal residence——.
6. Occupation ——; single, married, widowed, divorced.
7. Has the patient had previous attacks of mental trouble? — Give dates and duration of each attack ——.
8. If ever in institution for insane give date, name and location.
9. Was the present attack gradual or sudden in its onset? ——.
10. Was it characterized by depression, excitement, destructiveness, suicidal or homicidal tendencies, delusions, hallucinations? ——.
11. Has the patient any relatives who are or have been insane? ——.
12. If so, state what relationship and whether paternal or maternal.
13. Has the patient had syphilis? ——. If so, state extent of treatment.
14. Is the patient subject to epilepsy? ——. If so, state duration and frequency of seizures. ——.
15. Is there any history of severe illness? ——. Specify. ——.
16. Is there any history of severe injury? ——. Specify. ——.
17. To what extent does — use liquor, drugs. ——.
18. If a woman: Has she ever borne children? ——. How long since the birth of her last child? ——. Is she now pregnant? ——.
19. State fully present physical condition of patient. ——.
20. State fully mental condition of patient as observed by you. ——.
21. State fully the conduct of patient as communicated to you by others. ——.

22. State fully what the patient said in your presence. ——.

23. In my opinion the patient has the following dangerous tendencies. ——.

24. Have you given notice to the patient that application has been made for an examination into his or her mental condition and of the opportunity for a hearing? ——. If not state fully your reasons for withholding such notice. ——.

25. Does the patient desire a hearing in person? ——.

We, —— ——, M. D., and —— ——, M. D., being severally and duly sworn, do severally certify, and each for himself certifies, that we have with care and diligence personally examined —— —— now residing or being at —— in the county of ——, and as a result of such examination, hereby certify that he is insane and a proper subject for custody and treatment in a state or county hospital or asylum as an insane person under the provisions of the statutes.

We have formed this opinion from the history of the case and our examination of the patient as given above.

That the facts stated, and the information contained in this certificate are true to the best of our knowledge and belief.

—— ——, M. D. —— ——, M. D.

Severally subscribed and sworn to before me this — day of ——, 192—.

—— ——, — —.

(6) The petition of the applicant, the certificate in lunacy of the medical examiners, and the adjudication of insanity and commitment thereof, whether the question of insanity is tried before a jury or otherwise, shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed. [*1933 c. 330; 1939 c. 458, 524*]

Note: Term "nearest relative or friend available" in (1) may be construed to mean relative or friend willing as well as physically available, and member of county psychiatric service who signs petition so as to institute proceedings for commitment and treatment may be considered as "friend" for purposes of statute. 28 Atty. Gen. 634.

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51.02 Procedure to determine sanity. (1) On receipt of such application, the judge may make a summary investigation and shall thereupon:

(a) Dismiss the application if the judge is satisfied from an examination of the application and the petitioners, or from a personal examination of the alleged insane person, that the same is without merit; or

(b) Detain such person as provided in section 51.04 and appoint two physicians to examine and observe the patient and make written report of their findings, and if they report that the patient is not insane, the application shall be dismissed, and the patient discharged; or

(c) If the judge concludes from such report, or from personal observation of the patient, or report of a guardian ad litem, or immediately upon the filing of the application, that the patient may be insane, he shall cause notice to be given to the alleged insane person that application has been made for an inquiry into his mental condition, withholding the names of the applicants if he deems wise, and that a hearing on such application will be held before the judge at a time and place specified in the notice, at which such person can be heard. If it appears from the report of the physicians, or from personal examination by the judge, that the patient has not sufficient mentality to comprehend the notice for hearing, such notice need not be given, and the hearing may be held immediately or as soon as practicable. Unless physicians are appointed under paragraph (b) of this subsection, the judge shall appoint two physicians who shall examine the patient, and shall make a written report of their findings to the judge.

(2) If a jury trial be not awarded as provided in section 51.03, the judge may proceed at the time and place specified in such notice, or if such notice be not given because of lack of mentality, then upon the receipt of the physicians' report, make such further investigation as may seem to him necessary and proper, and if he shall be satisfied, from a personal observation of the alleged insane person, and from all the evidence adduced, that said person is insane, he may order him to be committed to a hospital or asylum for the

insane as provided in section 51.05, stating in such order whether or not such order was made without personal notice to the person adjudged insane, and if no notice was given, the reasons in brief for failure to give such notice.

(3) At any stage of such proceeding, the judge may appoint a guardian ad litem, and acquaint him with the time and place of such examination by the physicians. It shall be the duty of such guardian ad litem to personally observe the said alleged insane person, acquaint him of the opportunity for a hearing, and represent him at such hearing unless he procures other counsel. If, however, upon observation of said alleged insane person, the guardian ad litem shall conclude that such hearing would be without advantage to the alleged insane person by reason of his mental condition, then such guardian ad litem shall make and file with the judge a written waiver of such hearing. [*1933 c. 330; 1939 c. 458*]

Note: Physicians' report shall contain statement of reasons for application and finding on merits of reasons. All notices mentioned in (1) to (4) should be given. 22 Atty. Gen. 648.

Petitioners in insanity proceedings are not allowed to procure counsel to prosecute case. 24 Atty. Gen. 524.

51.03 Jury trial. If a jury trial be demanded by the alleged insane person or by any relative or friend acting in his behalf, before or after commitment, the judge shall direct that a jury be summoned to hear and determine the question whether such person is insane. If such a trial is demanded the procedure shall be the same as in trials by jury in justices' courts, and the trial shall be in the presence of the alleged insane person and his counsel and immediate friends and the medical witnesses. All other persons shall be excluded. If the jury find such person to be insane their verdict, which shall be signed by them, shall be in substantially the following form:

STATE OF WISCONSIN,
County of — ss:

We, the undersigned jurors in the case of —— ——, having heard the evidence in the case, are satisfied that the

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said —— —— is a fit person to be sent to a hospital or asylum for the insane.

If the jury find that the supposed insane person is sane their verdict shall so state, in which case the judge shall forthwith order his discharge.

Note: An instruction, given on a jury trial in an inquiry into the mental condition of a person previously adjudged insane, that it was necessary that all six jurors sign the verdict agreed on, was erroneous because it was only necessary that five members of the jury agree on their verdict, but, since such instruction was favorable to the subject of the inquiry, he could not complain thereof, and, since the jury's verdict was unanimous, such instruction did not in any event constitute reversible error. In re Hogan, 232 W 521, 287 NW 725.

51.04 Detention, pending the inquiry. (1) On the receipt by any such judge of the application or the report of the physicians provided for by section 51.01, such judge may, if in his opinion the public safety requires it, deliver to the sheriff a written order requiring him forthwith to take and confine the alleged insane person in some specified place until the further proceedings provided for by said section can be had or until further order.

(2) The judge may also order the detention of any person whose sanity is being investigated by him, during the investigation and for such reasonable time thereafter as he may deem necessary for proper medical observation to enable him to determine the necessity of committing him.

(3) Such person shall not be confined in any place established for the confinement of criminals or in any county home, and wherever possible shall be confined in a state or county hospital or asylum for the care of the insane. The superintendents of any state or county hospital or asylum for the insane, when requested by the judge, shall receive and care for any such person in such hospital or asylum. The period of such confinement shall not exceed thirty days for proper medical observations and ten days in cases where confinement is essential to the safety of such person,

or of any other person or to the maintenance of public peace and safety.

Note: Expenses of detention pending sanity hearings are governed as to rates by 51.08 and as to payment by 51.07. Costs and expenses of proceedings include detention. 25 Atty. Gen. 332.

Alleged insane person may be detained in padded cell located in room within building which houses county jail in that part thereof where sheriff has his living quarters but which is not used for confinement of criminals. Such place, however, may not be used if it is possible to use state or county institution for insane. 27 Atty. Gen. 169.

51.05 Commitments. (1) If the judge or a jury find that the person thus alleged to be insane is a fit subject to be sent to a hospital or asylum for the insane, the judge shall order him to be committed as hereinafter provided.

(2) All commitments from any county other than from a county having a population of two hundred fifty thousand or more, of insane persons whose insanity has not become chronic, or of transient or nonresident insane persons, and all commitments of chronic insane persons from any county not having an asylum for the chronic insane, shall be to the state hospital for the insane in the district of which the county in which the proceedings were had is a part.

(3) If such person is a resident of the county in which the proceedings are had and there is therein a county asylum for the chronic insane, and the judge is satisfied by the examination and proofs that the insanity of such person has become chronic, he may commit such person to such asylum.

(4) If such person is a resident of any county having a population of two hundred fifty thousand or more, the commitment shall be either to the county hospital for the insane or the county asylum for the chronic insane in such county, in the discretion of the judge, having due regard to the condition of the person committed and the nature of his or her malady. If such person is a nonresident of such county, he shall be committed to the state hospital for the insane in the district of which such county is a part, and the com-

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mitting judge shall, if possible, ascertain the state, county or other political division in which the person has a legal settlement, which information shall be included in the order of commitment.

(5) No person idiotic from birth shall be committed to either state hospital for the insane; neither shall any person physically infirm or mentally imbecile and not deemed dangerous when at large be committed solely because of such infirmity or imbecility.

(6) Should an insane person who is violent or dangerous, or about to become so, be brought to any hospital or asylum under a commitment which for any reason is void or irregular, the superintendent may detain him for a period not exceeding ten days to permit the procurement of a valid and regular commitment. [*1935 c. 336*]

51.06 Execution of commitment; expenses and fees. (1) If any relative or friend of any person committed to any hospital or asylum for the insane, being of legal age and competent to perform the duty, shall so request, the warrant for such commitment may be delivered to and executed by him, for which he shall be paid his necessary expenses, not exceeding the fees and expenses now allowed to sheriffs according to law; otherwise it shall be delivered to the sheriff, who, taking such assistants as the court issuing such warrant may deem necessary, shall receive such insane person and convey him to the hospital or asylum. Every female over ten years of age so committed shall be accompanied by a competent female.

(2) The sheriff shall be allowed the following fees for services performed under this chapter: For arresting and bringing a person alleged to be insane before the judge and subpœnaing witnesses the same fees as are allowed in other cases; for taking an insane person to the hospital or removing one therefrom, five dollars per day, railroad fare and other actual expenses and the actual expenses for the support and transportation of such person and three dollars per day, railroad fare and necessary expenses of such assistants as may be ordered by such judge, vouchers to be rendered for expenses in all cases; witnesses subpœnaed

before the judge shall be entitled to the same fees as are allowed by law in other cases before courts of record; said fees and charges to be paid out of the county treasury.

51.07 Fees of judge and examining physicians; costs and expenses of proceedings. (1) The judge, except in Milwaukee county, shall receive a fee of five dollars for the hearing of an application to commit a person alleged to be insane, which fee shall include the making of necessary copies of the order to commit such person and the commitment papers, together with the certificate required by section 51.05 when the insane person is committed to the county asylum.

(2) Each of the examining physicians shall receive a fee of four dollars for his examination and certificate, and ten cents per mile for necessary travel in complying with the requirements of his appointment; and in any contested matter arising under this chapter or in any case where the judge, in his discretion, shall postpone the examination of such person, a fee of four dollars for each day he may be required by the county judge to attend before him on such examination.

(3) All expense of the proceedings, from the presentation of the application to the actual commitment or discharge of the alleged insane person, including a reasonable charge for guardian ad litem, whether such person is a resident or nonresident of the county in which the proceedings are had, shall be allowed by the judge and paid by the county from which such person is committed or discharged, in the same manner as the expenses of a criminal prosecution in a justice's court are allowed and paid.

(4) If the insane person is a resident of any county in this state other than the county from which he was committed, the commitment shall not be invalid for that reason, and the county in which such person resides shall reimburse the county from which he was committed all lawful expenses of the examination and commitment, payment thereof to be enforced in the manner that charges for the maintenance of such persons are enforced. [*1939 c. 458*]

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Note: County judge who commits A and B on same day on criminal charges and commits C to hospital for insane is entitled to five dollars for commitment of A and B under (2) of 253.15, and to five dollars for committing C to hospital for insane under 51.07 (1). 20 Atty. Gen. 530.

51.08 Maintenance and clothing of inmates. (1) For the purpose of settlement with the county the expense of the maintenance, care and treatment of each inmate and the expense of any confinement for medical observation or for public safety in any state hospital or asylum for the insane shall be computed at the rate of five dollars and forty cents per week, and the expense of the maintenance, care and treatment of each inmate and the expense of any confinement for medical observation or for public safety in any county hospital or asylum for the insane shall be computed at the rate of four dollars and fifty cents per week. For each such inmate maintained at public charge elsewhere than in the county of his legal settlement the whole rate shall be chargeable to the state and one-half thereof such inmates maintained at public charge one-half of said rate shall be chargeable to the state and one-half to the chargeable over by the state against the county, if any, in which such inmate has a legal settlement. For all other county in which such inmate has a legal settlement. All such charges shall be adjusted as provided in section 46.10, but nothing herein shall prevent the collection of the actual per capita cost of maintenance, or a part thereof by the state board of control or by the county in counties having a population of five hundred thousand or more, pursuant to law.

(2) Whenever any insane person is committed or transferred to any state hospital, or to any hospital or asylum in any county other than the county in which he has a legal settlement, he shall, in addition to the maintenance charge, be furnished with all necessary clothing. On his admission this shall not be less than the following: For a male, three new shirts, a new and substantial coat, vest, two pairs of pantaloons of woolen cloth, two undershirts, two pairs of drawers, three pairs of socks, a black or dark stock or cravat, two pocket handkerchiefs, a good hat or cap, a pair

of new boots and shoes and a pair of slippers. For a female, in addition to the same quantity of undergarments, shoes and stockings, there shall be two woolen and two white petticoats or skirts, three good dresses, two nightgowns, cloak or shawl and a decent bonnet. Unless such clothing be delivered in good order the superintendent shall not be bound to receive the patient; but he may receive and furnish him with proper clothing; inmates shall also be furnished with necessary dental work, but not to exceed thirty-five dollars for each person, emergency surgical work may also be provided for inmates, but before any expenditure is made for dental work, or emergency surgical work, an estimate of the cost shall be made by the visiting physician and the superintendent of the asylum and forwarded to the state board of control; if the board shall approve such expenditure then the necessary dental work, or emergency surgical work, shall be done. The expense of furnishing all clothing and dental, and emergency surgical work, shall be chargeable to the state, and chargeable over to the county, if any, in which such inmate has a legal settlement, and shall be adjusted as provided in section 46.10, and in addition to the clothing required on admission no county shall be liable for more than thirty-five dollars for clothing for any one patient in any one year. [*1933 c. 140 s. 3; 1933 c. 470 s. 7m, 8; 1935 c. 336, 535; 1939 c. 393*]

Note: State board of control may charge and collect actual per capita cost of maintenance of patient at state hospital for insane. Interest may be charged upon cost of maintenance, at least from date of demand for payment. (Secs. 49.10 and 51.08, Stats. 1933) 22 Atty. Gen. 164.

51.09 Confinement of insane paupers. Whenever it shall appear to the satisfaction of any county judge, by a petition of a majority of the supervisors of any town, of the common council of any city or of the board of trustees of any village, containing a statement of all the facts in the case, that the public safety requires the close custody of any poor insane person having a legal settlement in such town, city or village, such judge shall make and deliver to the sheriff an order in writing requiring him forthwith to take and confine such insane person in some proper place to be therein speci-

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fied. Such insane person, when so confined, shall be subject to the directions of the said judge and shall receive such care, attention and treatment as such judge shall deem proper and necessary. All expenses incurred in confining, taking care of and maintaining such person, when properly certified to by the county judge, shall be audited by the county board and paid out of the county treasury.

51.10 Voluntary patients in institutions for the insane. Any person believing himself to be insane or suffering from mental disorder, may, upon his written application stating his mental condition, supported by the certificate of at least two physicians possessing the qualifications prescribed by section 51.02 [51.01] (2), based upon personal examination of such person, be admitted as a voluntary patient to any public hospital for the insane in this state in the discretion of the superintendent thereof for treatment. Such persons, if so admitted to either of the state or county hospitals or asylums for the insane, if not indigent shall be required to pay the actual per capita cost of his maintenance. If indigent, the superintendent of the institution shall forward a certified copy of the application to the county judge of the county from which such patient was admitted, who shall investigate the matter of legal settlement and make a legal finding as to the legal settlement and certify same to the superintendent of the institution and the county in which said legal settlement is located shall be chargeable with the person's care pursuant to section 46.10. Otherwise all voluntary patients shall have the same standing and be subject to the same laws, including section 51.12, rules and regulations as regularly committed persons, except that they shall have the right to leave such hospital at any time if in the judgment of the superintendent they are in fit condition, on giving five days' notice to the superintendent of their desire to do so. [*1935 c. 336*]

51.11 Re-examination of persons adjudged insane. (1) Except as otherwise provided in sections 51.22, 357.11 and 357.13, any person adjudged insane by any court, tribunal, or officer having lawful authority so to adjudge, or restrained of his liberty because of his alleged insanity, may on his own verified petition or that of his guardian or some

relative or friend have a retrial or re-examination of the question whether such person is sane or insane before the judge of any court of record of the county in which such person resides or in which he was adjudged insane.

(2) The petition shall state the facts necessary to show that the judge to whom it is addressed and presented has jurisdiction to retry or re-examine the question of the present mental condition as to sanity or insanity of the person in whose behalf such petition is presented. It shall also state whether such person has a general guardian and if so, the name and residence of such guardian, and whether such person is detained in any hospital or asylum for the insane, and if so, its name and location and the name of the superintendent thereof.

(3) The judge shall thereupon by order appoint two physicians, each having the qualifications prescribed by section 51.01, to examine and report to him whether in their opinion the person in whose behalf the petition is made is sane or insane; and shall fix the time and place of such examination and cause reasonable notice thereof to be given to the guardian of the person to be examined, if he has a general guardian, and to the superintendent of the hospital or asylum in which the person is detained, if he is so detained.

(4) The petitioner and parties notified and any relative or friend of the person to be examined, may appear at such examination, offer testimony, and be heard. Should the state board of control certify that such superintendent cannot attend such examination without danger of injury to his institution, his deposition may be taken and received pursuant to law.

(5) If such physicians report such person sane and the judge is satisfied that he is sane and no demand for a jury trial is made, the judge shall forthwith cause judgment to be entered to that effect and order his immediate discharge; but if the judge shall direct, or the person examined or his guardian or any of his friends or relatives shall demand, a trial by jury, an order for such trial shall forthwith be entered, and thereupon the procedure shall be,

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as near as may be, as prescribed in section 51.03. If the judge or jury find that such person is insane, the judge shall order him returned to the hospital or asylum or other place of detention of which he is an inmate; but if at large on parole or leave of absence, he shall be allowed to remain at large, unless the judge is satisfied that it will be unsafe to do so, in which case the judge may order him to be so returned.

(6) All persons who render services in such proceedings shall receive the same compensation as is allowed by law to persons rendering similar services in a judicial inquiry as to the mental condition of a person alleged to be insane, and all expenses of such proceedings shall be allowed, paid and adjusted as provided in section 51.07.

(7) When a proceeding for such retrial or re-examination is not pending in a court of record and a jury trial is not desired by the persons authorized to commence such proceeding, the state board of control acting as a commission in lunacy may, on application, by like procedure determine the sanity or insanity of any such person committed to any hospital or asylum for the insane, and its determination shall be recorded in the office of the county judge of the county in which such inmate resides or was adjudged insane, and shall have the same force and effect as though made by such judge. The board may also, on or without application, if it has reason to doubt the insanity of any such inmate, request the county judge of the county in which such inmate resides or was adjudged insane to determine his mental condition, pursuant to this section; and it shall be the duty of said judge to do so.

Note: A person charged with crime who was committed for insanity at the time of the trial is entitled to a re-examination and a jury trial on the question of sanity, but he is not entitled to be discharged in case the jury should find him sane except upon the order of the court. State ex rel. Ribansky v. Shaughnessy, 205 W 136, 236 NW 567.

51.12 Transfer and discharge of patients; insane soldiers; tubercular patients. (1) The state board of control may transfer patients from any state or county hospital or asylum to another if in its judgment it is for the best inter-

est of the patient to be so transferred; and whenever in its opinion it would be for the benefit of patients in the state hospitals to remove therefrom any of the chronic insane not chargeable to any county, it may cause their removal to some county hospital or asylum. The foregoing provisions shall not apply to any insane soldiers who are now inmates of the Wisconsin Memorial Hospital.

(2) The board may, whenever in its opinion any county has not made provision for the proper care of its acute or chronic insane, direct the removal of either class thereof to the asylum of some other county, or to any county possessing suitable accommodations for them; and such removal shall be made at the expense of the county in which such persons reside. Any county whose asylum can accommodate a larger number of chronic insane than are resident therein may receive such insane persons.

(3) Whenever, by a fair trial, it shall have become reasonably certain that any patient in either state hospital is incurably insane, and such patient is retained to the exclusion of others whose cases are of a more hopeful character, the department may transfer him to some county asylum authorized by law to receive such patients. The department may, with the approval of the committing court, transfer to any county asylum, any inmate of the central state hospital, committed under section 357.11 or 357.13, whose mental condition is believed to be chronic or incurable and who in their opinion could be properly cared for in a county asylum.

(4) If the relatives or friends of any patient in either state hospital shall ask the discharge of such patient, before such patient has recovered from insanity, the board may, in its discretion, discharge such patient, and may require such relatives or friends or either of them to give a bond to be executed to the state of Wisconsin, in such sum and with such sureties as it may deem proper, conditioned for the safe-keeping of such patient.

(5) Whenever it shall be brought to the notice of the board that any insane person within the state is legally entitled to receive care and support in the national hospital

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for insane soldiers, it shall take proper measures to procure his admission to said hospital and to transport him there.

(7) The board shall make provision for the segregation, care and treatment of tubercular insane patients in the state and northern hospitals for the insane, and for that purpose may set apart one ward for male patients, and one ward for female patients, in said hospitals and equip said wards for the care and treatment of such patients. Said board shall transfer from any other parts of the said institutions any tubercular patients who are liable to spread the disease or whose association with other patients is dangerous to them. [*1935 c. 336; 1941 c. 170*]

Note: Custody and supervision by department of mental hygiene would not be lost if department, acting under 51.12 (3), transfers to county asylum person sentenced to life imprisonment who was subsequently transfered to Winnebago state hospital by board of control acting as commission in lunacy. 51.13 (2) would not apply and county institution would receive patient subject to 51.23 (3) and 51.22. 28 Atty. Gen. 193.

51.13 Parole of inmates; leave of absence; presumption of sanity and discharge by lapse of time. (1) Each superintendent of the state and northern hospitals for the insane and the Milwaukee county hospital for the insane may permit any inmate in his hospital to go at large on parole, if in his opinion it is safe and proper to do so. Whenever within two years after granting such parole it becomes unsafe or improper to allow such persons to remain longer at large, the superintendent shall require his return to the hospital, unless such person shall have been adjudged sane by competent authority.

(2) The superintendent of any county asylum may, upon the written recommendation of the visiting physician thereof, allow any of its inmates to go therefrom on leave of absence for such time and under such conditions as such physician may direct.

(3) Upon the expiration of two years from the time of granting such parole or such leave of absence the authority

of the superintendent to require the return to the hospital or asylum of the person paroled or granted leave shall end, and the presumption of insanity against such person because of the original adjudication that he was insane shall cease, and until a new adjudication to the contrary, he shall be presumed sane the same as though his sanity had been established by a judicial determination.

Note: Superintendents of county insane asylums have no authority under 51.13 (2) to release mentally defective inmates transferred to such asylums by department of public welfare pursuant to 52.03 (2). Such persons can be released only by superintendents of state institutions for mental defectives with consent of department of public welfare, under 52.03 (3), after inmate has been re-transferred from county asylum to such state institution. Persons transferred to hospital for insane pursuant to 52.03 (4), after having been first erroneously committed to state institution for mental defectives, may be released on parole from such hospital for insane pursuant to 51.13 (1), same as if originally committed to such hospital. 29 Atty. Gen. 442.

Superintendent of county asylum has authority under 51.13 (2) to grant leave of absence to insane person transferred to such asylum from central state hospital, when such person was originally transferred to central state hospital from prison pursuant to 51.22, but only after such person's prison term has expired. 28 Atty. Gen. 193 distinguished. 30 Atty. Gen. 103.

51.14 Reports to county judge; record. Whenever any person is committed to any hospital or asylum for the insane from any county other than the county where he has a legal settlement, the superintendent of such hospital or asylum shall immediately notify the county judge of the county in which such person has a legal settlement of the fact of such commitment. Said superintendent shall also notify such judge of the fact whenever any such inmate dies, is discharged, transferred to any other institution, escapes, is paroled or granted leave of absence, or returns from such parole or leave. The county judge shall keep a record of the facts so reported.

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51.15 State hospitals for insane. (1) The hospital for the insane located near the city of Madison shall be known as the "Mendota State Hospital" and the hospital for the insane located near the city of Oshkosh shall be known as the "Winnebago State Hospital." Whenever in the statutes or in any session law the terms "Wisconsin State Hospital for the Insane" or "Northern Hospital for the Insane" are used, referring to the state hospitals herein, said terms shall be understood and construed to refer to the "Mendota State Hospital" and "Winnebago State Hospital," respectively.

(2) The governor and the state board of control shall constitute a special board who shall divide the state by counties into two districts, all the insane persons from one district to be sent to the hospital near Madison, all from the other to the hospital near Oshkosh; and from time to time shall change the bounds of these districts as may be necessary, arranging them in reference to the number of insane persons supposed to be in them, the capacity of the hospitals and the convenience of access to them. [*1935 c. 9.*]

51.16 Superintendent's oath and duties; subpoenas on. (1) The superintendent of each said hospital shall take and file the official oath, and shall devote all his time and attention to his official duties.

(2) The superintendent shall not be compelled to obey the subpoena of any court in any case, civil or criminal, if he shall file with the magistrate or clerk his affidavit that to obey the same would be seriously detrimental and hazardous to the welfare of the hospital under his charge, except when an accusation of murder is to be tried; nor in such case unless the judge shall make a special order therefor, and the subpoena, with a memorandum thereof indorsed thereon, be served one week before the time when he shall be required to appear; but no superintendent shall be entitled in any case to make and file such affidavit, who shall, upon tender of the usual fees of witnesses in courts of record, refuse to be present and to give his deposition at his office, usual place of business, or usual place of abode; and any superintendent so present and giving his deposition who shall be detained four hours from the time fixed for the taking thereof or

from the time to which the taking of the same may have been adjourned may make affidavit that further detention would be seriously detrimental or hazardous to the welfare of the persons or business in his charge whereupon the officer before whom such deposition is being given shall adjourn further proceedings thereon to a future day.

51.17 Admission of patients. (1) Patients shall be admitted into said hospitals from the several counties as provided in sections 51.05, 51.08, 51.10 and 51.15.

(2) The relatives, friends, or guardian of any patient may pay for his maintenance and clothing, or any part thereof, and the account of such patient shall be credited with any sums so paid; and they may provide him with special care or a special attendant as may be agreed upon with the superintendent upon payment quarterly in advance of the charges and expenses thereof. [*1935 c. 336*]

51.18 Fund and clothing on discharge. When any patient is discharged from either of said hospitals as cured the superintendent shall furnish him with suitable clothing and a sum of money not exceeding twenty dollars, unless otherwise supplied, all of which shall be charged to the county, if any, of which such patient is a resident.

51.19 Child born in hospital. If any patient shall give birth to a living child while such patient is an inmate of either hospital and has not been such for more than nine months, such child shall be immediately removed from the hospital by her friends or by the county in which the patient resided when admitted. The superintendent shall notify the county judge to make such removal, and if such child be not immediately thereafter removed he shall make suitable provision for its care and comfort, and charge all expenses thereof to such county, to be adjusted as provided in section 46.10.

51.20 Record of inmates. The superintendent of each state hospital for the insane shall cause to be kept a daily record of each inmate, and shall on the first Monday of each month report to the board such information as it may require, showing:

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(1) The name, age, residence and date of admission of each person received as an inmate of the hospital during the next preceding month, with a brief statement of his or her mental and physical condition and form of insanity, and name and residence of the guardian or person chargeable for the support of such inmate.

(2) The name, age and residence of each inmate discharged or removed during such month, the condition of each at such time, the reason for each discharge or removal and the place to which each inmate was sent or taken.

(3) The name, age and residence of each inmate who died during the preceding month, the immediate cause of death and the disposition made of the body.

(4) A statement of any unusual restraint or confinement to which any inmate was subjected during such month and the necessity therefor.

(5) The name and particular service required of each person discharged from or who quit his employment during such month, with the reasons for his discharge and the date thereof or of his voluntary retirement from service.

51.21 Central state hospital. (1) The hospital for the criminal insane, located at Waupun is hereby designated the "Central State Hospital."

(2) The said institution shall be used for the custody, care, and special treatment of insane persons committed thereto pursuant to sections 51.22, 357.11 and 357.13. [*1941 c. 48*]

51.22 Transfer of insane convicts and dangerous patients. The department of public welfare, acting as a commission in lunacy, as provided in section 51.11, may adjudge any prisoner in the state prison, the state reformatory, the industrial home for women, any county jail or in the Milwaukee house of correction to be insane, or feeble-minded, and may, with the approval of the governor, remove him to the central state hospital or to one of the homes for the feeble-minded. Said department may likewise transfer to said hospital any insane or feeble-minded person confined in any state or county hospital, or asylum for the insane, or

colonies for feeble-minded and epileptic or feeble-minded who, because of suicidal or homicidal tendencies, is dangerous to himself or others. When a prisoner thus removed recovers his reason before the expiration of his sentence he shall, by order of the department, be returned to the prison from whence he was taken. [*1941 c. 48*]

51.23. General statutes applicable; exceptions; contracts with Milwaukee hospital.

(1) The provisions of all statutes relating to state hospitals for the insane, except subsections (1), (2), (4), (5) and (6) of section 51.12 are applicable to the central state hospital. Section 51.13 and subsection (3) of section 52.03 are applicable only for inmates whose prison term or sentence has expired.

(2) With the approval of the governor the department of public welfare may contract, at a price not exceeding $4.25 per week for each person, with the governing authority in charge of any hospital for mental diseases in any county having a population of 250,000, for the care and maintenance of persons who have been committed to the central state hospital, pursuant to law; and when any such person shall be transferred to such hospital he shall be cared for and maintained under such rules and regulations as may be prescribed by said department of public welfare. All such persons shall be subject to the statutes governing inmates of the central state hospital.

(3) All persons required by law to be committed or transferred to the central state hospital, but remaining or confined in any other state hospital because sufficient provision has not been made for their care and treatment at said central state hospital, shall be subject to the statutes governing inmates of the said central state hospital. [*1941 c. 48, 170*]

Note: Board of control may charge county of legal settlement for support of insane person transferred from Waupun to central state hospital for insane. Such charge may be for all time spent in central state hospital. 23 Atty. Gen. 9.

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51.234 Paroles from central state hospital. (1) Whenever in the judgment of the superintendent of the central state hospital any inmate found to be insane or feeble-minded and committed under the provisions of sections 357.11 and 357.13, and who has not made such recovery as would warrant his return to the court as provided in said sections but who is in a condition to be paroled under supervision, said superintendent shall report the name of such inmate, with a statement of his reasons for his judgment that such inmate should be paroled, to the court which committed such inmate and to the department of public welfare. If the court does not file objection to the parole of such inmate within 60 days of the date of said report the superintendent may parole such inmate to a relative, legal guardian or other person. In the designation of a parole guardian the person selected shall, where possible, be of the same religious faith as the parents of such inmate. At any time during such parole, upon evidence satisfactory to said superintendent or to the department of public welfare, such inmate shall be returned to the central state hospital. Every such parole guardian shall report the physical, moral and mental condition of the inmate to such superintendent, either in person or in writing, as often and as fully as may be required by the rules and regulations of the department of public welfare, and in case of failure so to report on request the inmate shall be returned to the central state hospital. At all times during the parole the inmate shall be accessible to said superintendent or any agent he may designate. The central state hospital shall not be liable in any manner for such patient while on parole. Such liability shall devolve upon the parole guardian of said inmate.

(2) In the event that the court from which said inmate was committed shall object to the parole of such inmate such objections shall be in writing and shall be filed with the superintendent. If notwithstanding such objection said superintendent is of the opinion that such inmate should be paroled he may refer the objections to the state board of control, and said board after full investigation, if in its judgment the facts warrant, may order such parole upon the

conditions prescribed in this section. [*1933 c. 264; 1941 c. 48, 170*]

Note: Inmate paroled from central state hospital for insane under 51.234, is not automatically released after expiration of two-year parole period. Committing court retains jurisdiction to determine sanity or insanity of inmate committed to central state hospital for insane pursuant to 357.13 (4). 27 Atty. Gen. 229.

51.235 Wisconsin psychiatric institute. (1) The psychiatric institute at Mendota is hereby designated as the "Wisconsin Psychiatric Institute."

(2) The provisions of the statutes relating to the commitment, custody, transfer, parole, and discharge of insane persons in state hospitals for the insane are hereby made applicable to the Wisconsin psychiatric institute, which is hereby authorized to admit any duly committed insane person from any county in the state.

51.24 Milwaukee hospital for insane. (1) Any county having a population of two hundred and fifty thousand may, pursuant to section 46.17, establish and maintain a hospital for mental diseases, for the detention and care of drug addicts, inebriate persons and persons adjudged or alleged to be insane pursuant to law and whose insanity has not become chronic. Such hospital shall be governed pursuant to section 46.21.

(2) The state shall compensate every such county for all insane persons maintained at public cost at its hospital for mental diseases, commencing July 1, 1933, at the rate of four dollars and eighty cents per week for each acute insane person and two dollars and ten cents per week for each chronic insane person. The first period of computation for such compensation shall be for the six months period ending December 31, 1923, and each succeeding period of computation for such compensation shall be each succeeding six months next after the expiration of said first six months period.

(3) The number of weeks that each insane person has been so maintained during each period of computation, shall

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be ascertained; and the state board of control of Wisconsin shall determine the number of weeks that acute patients have been maintained and the number of weeks that chronic insane patients have been maintained in said institutions, and the compensation for the maintenance of such patients shall be based upon the determination made by said board.

(4) The governing authority of each such hospital shall, as soon as practicable after the expiration of each such period of computation, prepare a statement giving the name of each insane person maintained at public cost at said hospital during the next preceding period of computation and the number of weeks he or she has been maintained during said period, also showing the aggregate of such weeks for all insane persons so maintained during said period and the amount of compensation to be made by the state to said county therefor, at the rates and upon the basis above fixed by said board, which statement shall be verified by said superintendent and approved by the board of administration in charge of said hospital as correct and true in all respects and delivered to the state board of control.

(5) Said board of control shall attach to said statement a certificate showing the number of weeks' maintenance furnished to acute insane patients and the number of weeks' maintenance furnished to chronic insane patients, which shall be certified by the secretary and president of said board and filed with the secretary of state, who shall thereupon draw his warrant for the aggregate amount of compensation specified in said certificate and deliver said warrant to the state treasurer who shall thereupon pay the amount of said warrant to said county.

(6) No such county shall be entitled to such credit or any compensation whatever from the state for the care of any person who has not been duly adjudged to be insane and properly committed as such, nor for the care of any insane person whose support is not properly a public charge. [*1933 c. 140 s. 3*]

Note: Expense of transferring to proper county by board of control persons committed to county hospital for mental

diseases who are found to have legal settlement in some other county may not be included in legal six months' bill as submitted under this section and paid out of appropriation provided by 20.18 (2) (b). 22 Atty. Gen. 329.

51.25 County Asylums. Every county may, pursuant to section 46.17, establish a county asylum for the chronic insane for the detention and care of persons adjudged or alleged to be insane pursuant to law; and in connection therewith a separate hospital or pavilion for the care of the chronic insane who are affected by pulmonary tuberculosis. In counties whose population is two hundred and fifty thousand or more such institution shall be governed pursuant to section 46.21. In all other counties it shall be governed pursuant to sections 46.18, 46.19 and 46.20; but the trustees shall, in addition to the superintendent, appoint a visiting physician of said asylum; and they shall receive the same compensation for their services as is allowed members of the county board.

51.26 Admission of patients; state aid; private patients. (1) Upon completion of the building for such asylum patients may be admitted thereto as provided in sections 51.05, 51.08 and 51.10, and as hereinafter provided, subject to all statutes relating to the supervision of the insane by the state board of control.

(2) The trustees may transfer to and receive into said asylum all inmates of the state institutions for the insane who are residents of said county and held as chronic or incurable, all insane inmates of the county home thereof, all inebriate persons committed to the county home, or drug addicts committed to the county home, and persons adjudged to be insane according to law, resident in said county and who may be lawfully committed to said asylum.

(3) The trustees may receive into said asylum, any inebriate or insane person resident in any other county in the state, not admitted to either of the state hospitals, and such person shall be subject to the provisions of law governing inebriates and insane persons resident in the county in which such asylum is located; but the cost of maintaining

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such inebriate or insane person shall be adjusted on the basis prescribed in section 51.08.

(4) The trustees may receive into said asylum, for care and treatment at private charge, any inebriate person and any person adjudged to be insane according to the laws of this state, but without extra expense to the state or the county in which the asylum is located.

(5) The trustees or the board of trustees provided for in section 46.21 may file an application with the county judge praying the transfer of any inebriate person or drug addict in said county home or hospital for mental diseases to the state hospital for the insane at Mendota or Winnebago. Upon receipt of such application the county judge shall fix a time for hearing said matter and shall notify one of the nearest relatives of such inebriate person or drug addict, if any of such relatives can be located within the state, at least eight days before such hearing by personal service or by registered mail, and may also give due notice to any known nonresident relative, and upon such hearing shall proceed summarily to make inquiry as to the reasons for such application. If in his opinion the best interests of society or for the patient require such transfer, the court may by an order of commitment transfer said patient from the county home to the state hospital for the insane at Mendota or Winnebago.

(6) Whenever it shall be made to appear to the satisfaction of any judge of a court of record, by a petition of three citizens, one of whom shall be the wife or nearest relative, if available in the county, otherwise by a poor commissioner or officer having charge of poor relief, that any resident of the county, or person temporarily residing therein, is an inebriate or drug addict, as defined in section 49.07, such judge shall by order fix a time for hearing such petition on three days' personal notice to the person so afflicted, and require him to appear at such hearing, and summarily hear the evidence and witnesses in support of such petition. At such hearing if the court shall find upon sufficient evidence that such person is an inebriate or drug addict, and requires confinement or treatment, or that it is necessary for the

protection of himself or the public or his family or relatives that he be committed to some institution, he may be committed by such court to the county asylum for the insane of such county, except that in counties having a population of five hundred thousand or more such commitment shall be to the hospital for mental diseases, or of an adjoining or adjacent county, or some state hospital for the insane, for such period of time as to the court may seem necessary for curing the malady with which he may be suffering, or for such period of time as in the judgment of the superintendent and attending physician in charge of such institution it may be necessary to retain him to recover and be able to take care of himself. [*1935 c. 353*]

51.27 Tubercular patients; segregation and separate maintenance; state aid. (1) Whenever any county has erected a separate hospital or pavilion for chronic tubercular insane, the state board of control may transfer thereto such chronic insane persons as it may be satisfied are afflicted with pulmonary tuberculosis to such a degree as to render them carriers or spreaders of that disease.

(2) In lieu of the rates prescribed by section 51.08, the state shall be chargeable at the rate of six dollars per week for each such patient resident in the county which maintains said hospital, and ten dollars per week for each other patient; and of the latter rate five dollars for each such patient shall be chargeable over to the county, if any, of which such patient is a resident. All such charges shall be adjusted as provided in section 46.10.

51.28 Burial of deceased inmates. (1) Whenever a patient in any county asylum for the insane, whose maintenance is chargeable to the state or to any other county, shall die, the superintendent shall immediately notify one or more of the relatives or friends of the deceased of the fact, if such notification be possible by ordinary means; and if such relatives or friends cannot be so notified or will not make provision for the burial of the deceased (and if the body be not claimed as provided in section 155.02) the superintendent shall provide for the decent and proper burial of his remains.

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(2) The reasonable and proper expenses of such notification and burial services not exceeding in the aggregate fifty dollars, shall be chargeable to the state and chargeable over to the county, if any, of which such patient was a resident at the time of his death, and adjusted as provided in section 46.10.

51.30 [*Repealed by 1935 c. 336*]

EXHIBIT "B"

Extract from Hearing on Petition for New Trial Held Before the Honorable Harvey L. Neelen, Judge of the District Court of Milwaukee County, Wisconsin, on the 11th Day of September, 1946.

THE COURT: This court has followed the same procedure which has been used in these matters in the county courts, and also——

THE COURT: I am going to deny the motion, and you can take it up on appeal, because there was no demand made. Let the record show this. The procedure in this case was no different from what has been used in any other alleged insanity hearing by either the County Court or District Court in Milwaukee County, that this defendant was present in person at the time of the preliminary hearing. He was present also by his counsel and an attorney who was appointed by the court as guardian ad litem at the preliminary hearing. At the time of the preliminary hearing, the alleged incompetent was informed that the doctors would be appointed to examine him, and at that time there was no demand made by either the attorney or his client for a jury trial, at which time the report of the doctors was made. This man was sent out to Milwaukee County Hospital on a temporary writ of thirty days, at the expiration of which, I believe, the hospital asked for a permanent writ, and a permanent writ was signed. During the time that he was out there on a temporary writ, there was still no demand by the defendant or his attorney to the court for a

jury trial or by the guardian ad litem. This man was committed under Chapter 51 of the Statutes, which requires that the physicians make a written report to the court, and upon receipt of the physicians' report, the court will make such further investigation as may seem to him necessary and proper, and if he is satisfied from a personal observation that the alleged insane or senile person is insane or senile, he may order him to be committed to a hospital or asylum for the insane.

EXHIBIT "C"

STATE OF WISCONSIN, IN SUPREME COURT, AUGUST TERM, 1946

No. 119

In the Matter of the Legal Inquiry into the Mental Condition of WILLIS BRAND, Alleged to be Insane

WILLIS BRAND, *Appellant,*

vs.

MILWAUKEE COUNTY, et al., *Respondents.*

Appeal from two orders (referred to as judgments) of the district court of Milwaukee County; Harvey L. Neelen, Judge. *Appeals dismissed.*

It appears that on or about December 13, 1941, Flossie Brand, wife of the appellant, filed a petition in the district court of Milwaukee county, praying that the court institute an inquiry to determine the mental condition of the appellant; that in response to the petition a hearing was had on December 17, 1941, notice of which was served on the appellant on December 15, 1941. On December 15, 1941, Alfred R. Gandrey, Esq., member of the Bar of the State of Wisconsin, was appointed guardian ad litem charged with the duty of protecting the interest of the appellant. On December 17, 1941, hearing was had before Judge Neelen,

at which time the appellant appeared in person and by his attorney, Samuel J. Schrinsky, Esq., for judicial inquiry. Flossie Brand, Winifred Dennison and Eunice Rankin, petitioners, were present as was also the guardian ad litem. Witnesses were sworn and on December 17, Judge Neelen appointed two physicians to examine the appellant who was alleged to be insane. On the 24th day of December, 1941, the physicians appeared before Judge Neelen and filed their written findings and testified orally with respect to the condition of the appellant. Judge Neelen then issued an order finding Willis Brand to be legally insane and issued a commitment committing him to the Milwaukee County Hospital for Mental Diseases until transferred to a United States Veterans' Administration Facility, which order was dated December 24, 1941, and on January 29, 1942, upon receipt of a letter from the superintendent of the Milwaukee County Hospital for Mental Diseases, stating that authorization had been received from the Veterans' Administration to transfer the appellant to Downey, Illinois, Judge Neelen issued an order committing Willis Brand to the United States Veterans' Administration Facility at Downey, Illinois, where he remained until April 26, 1942, when he escaped, and thereafter on May 8, 1942, he was declared official discharged from the hospital, since which time appellant has not been subjected to confinement. The appellant found employment at various places and on July 10, 1945, filed an application in the district court for re-examination into his mental condition. On February 6, 1946, the appellant again petitioned the court for a re-examination to determine his sanity in accordance with the statutory provisions. A hearing was held and on March 13, 1946, the district court entered an order directing that all proceedings in the matter be dismissed and that said Willis Brand be discharged and that his civil rights be forthwith restored.

On the 21st day of January, 1946, in order to collect the moneys due the appellant from the United States Government, Flossie Brand, the wife of appellant, was appointed his guardian by the county court of Milwaukee county. The guardianship remained in existence and Flossie Brand

continued to act as guardian of the estate of the appellant until the 18th day of March, 1946, when she was discharged.

On June 11, 1946, appellant filed a petition asking the court to vacate the order of insanity entered on December 24, 1941, on the ground of newly discovered evidence and errors committed upon the hearing and for a new trial. This petition came on for hearing before Judge Neelen on September 11, 1946. At the close of the hearing on that day, the court denied appellant's motion as appears from the minutes of the trial. In denying the motion, the court said:

"The procedure in this case was no different from what has been used in any other alleged insanity hearing by either the County Court or District Court in Milwaukee County, that this defendant was present in person at the time of the preliminary hearing. He was present also by his counsel and an attorney who was appointed by the court as guardian ad litem at the preliminary hearing. At the time of the preliminary hearing, the alleged incompetent was informed that the doctors would be appointed to examine him, and at that time there was no demand made by either the attorney or his client for a jury trial, at which time the report of the doctors was made. . . . This man was committed under Chapter 51 of the Statutes, which requires that the physicians make a written report to the court, and upon receipt of the physicians' report, the court will make such further investigation as may seem to him necessary and proper, and if he is satisfied from a personal observation that the alleged insane or senile person is insane or senile, he may order him to be committed to a hospital or asylum for the insane."

The appellant appeals from the order of December 24, 1941, and also from the order of September 11, 1946. It is stated in the brief that he also appeals from the order of January 9, 1942, but the record shows that no such appeal was taken.

ROSENBERRY, *C.J.:*

During the consideration of this case the question arose whether orders made pursuant to Ch. 51 Stats. are appealable. Counsel were asked to file additional briefs upon this question. Counsel for the petitioner responded but we have no briefs from the district attorney's office.

Sec. 51.01 (1) provides: "Whenever any person within this state shall be believed to be insane or senile application may be made in the manner prescribed in subsection (2) (name of the persons qualified to make the application) to the *judge* of the county court or of a district court which is a court of record, or in the absence of disability of such *judge* to *the* judge of any court of record acting in his place."

Throughout Ch. 51 all provisions relating to the procedure are applicable to the judge only.

Sec. 51.05 (1) provides: "If the *judge* or a jury find the person thus alleged to be insane is a fit subject to be sent to a hospital or asylum for the insane, the *judge* shall order him to be committed as hereinafter provided."

Sec. 260.03 is as follows: "An action is an ordinary court proceeding by which a party prosecutes another for the enforcement or protection of a right or redress or prevention of a wrong or the punishment of a public offense. Every other remedy is a special proceeding."

Proceedings under Ch. 51 are not actions. Such proceedings are inquests to determine the sanity of the person about whom the inquiry is made and are therefore special proceedings.

Sec. 270.53 is as follows: "(1) A judgment is the final determination of the rights of the parties in the action.

"(2) Every direction of a court or judge made or entered in writing and not included in a judgment is denominated an order."

The proceedings under Ch. 51 are before the judge. Proceedings under that chapter being special and not actions

determinations made by the judge are orders and not judgments.

We are asked to disregard the distinction between the term "judge" and "court" because in some instances they have been used interchangeably. Not so in the statutes relating to procedure. Counsel argue that the appeal in this action is taken under sec. 274.01 (1) which provides:

> "Except as otherwise specially provided, the time within which a writ of error may be issued or an appeal taken to obtain a review by the Supreme Court of any judgment or order in any civil action or special proceeding in a court of record is limited to six months" etc.

The argument is that this section authorizes appeals from orders. Sec. 274.33 relating to appealable orders provides:

"The following orders *when made by the court* may be appealed to the Supreme Court."

Certainly the Legislature would not have observed carefully the distinction between these terms and carefully defined them if they were to be used interchangeably. The fact that many lay people and even some members of the legal profession use the term "judge" when referring to a court and the word "court" is used to refer to a judge is immaterial. The Legislature having carefully preserved the distinction it is not the function of this court to amend or change the statute.

It therefore appears that no appeal lies from an order made by a judge in a special proceeding under Ch. 51. The reason for the distinction is plain. Under the constitution there are three separate and distinct branches of jurisdiction: (1) appellate jurisdiction; (2) concerning control over inferior courts; (3) the original jurisdiction to be exercised by certain writs.

It has been held that appellate jurisdiction under these provisions extends only to the revision of the decisions of inferior courts. *State ex rel. Brownell*, 80 Wis. 563, 50

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N. W. 413; *Hubbell* v. *McCourt*, 44 Wis. 584. See also *Whercatt* v. *Ellis*, 68 Wis. 61, 31 N. W. 762.

It has been held over and over again that the right of appeal is statutory and does not exist except where expressly given and cannot be extended to cases not within the statute. *Western Union R. Co.* v. *Dickinson*, (1872), 30 Wis. 380; *Witzko* v. *Koenig*, 224 Wis. 674, 272 N. W. 864.

The orders appealed from are not appealable and the appeals confer no jurisdiction upon this court. *Gilbert* v. *Hoard*, 201 Wis. 572, 230 N. W. 720.

In the case of *Re Hogan*, 232 Wis. 521, N. W. , the distinction between "judge" and "court" was overlooked and the case was treated in the trial court and in this court as if it were a trial before the court. That was a proceeding under sec. 51.11 Stats. 1933. This section provided:

"Any person adjudged insane . . . may . . . have a retrial or re-examination of the question whether such person is sane or insane *before the judge* of any court of record of the county in which such person resides." . . .

In the case of *In re Zeigler*, 245 Wis. 452, N. W. , the statement is made *arguendo* in a habeas corpus case that error could only be reviewed by writ of error or appeal. So far as these cases are in conflict with the determination in this case they are overruled. The precise question involved in this case was not raised in either case.

By the Court.—The appeals are dismissed.

December 23, 1947.

Motion for rehearing denied February 17, 1948, without opinion.